

Approved 4/11/07

**TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
February 7, 2007**

Board Present: Bob Ellis, Evelyn Kalloch, Arthur Kiskila, Frank Muddle, Dan Remian, CEO Scott Bickford and Recording Secretary Deborah Sealey

Absent: None

1. Call to Order: Chairman Remian called the meeting to order at 7:04 pm and a roll call was taken.

2. Minutes of 1/3/07:

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, to accept the minutes of the 1/3/07 meeting as presented.
Carried 5-0-0

3. Continuation of Amendment to Meduncook Plantation, Lot #26, Map 5, portion of Lot 84 / Meduncook Plantation Application for Land Use Permit, Proposed Lot 26: Chairman Remian said he had made some notes on the revised drawing submitted by Mr. Tower. His first concern was that he saw no lot line that attached Lot 26 to the Meduncook Plantation Subdivision [MPS]; Mr. Ellis added that there was retained land between Lots 10 and 26. Mr. Tower explained that the two lots were touching from a depicted pin to the water line. Mr. Remian then asked the significance of a dashed line on the plan, which the applicant said was a tie line, though not a property line. Mr. Remian stated that the 75' structure setback line did not appear on the legend and the 250' Shoreland Zone line should be a solid black line. Mr. Remian said that the tree line by the shore was also not shown on the legend. Mr. Tower responded that CEO Bickford had pointed this out during his review and it had been added to the legend on the engineer-stamped drawing. Mr. Remian said he was satisfied with the developer's explanation of the attachment of Lots 10 and 26. Mr. Ellis asked what had bothered the PB attorney about that and Mr. Remian said that Mr. Cunningham had thought the lots touched only at the pin location.

Mrs. Kalloch questioned why there were two different test pits. Mr. Tower explained that Doug Meserve had identified the subdivision's preliminary test pit location, while Mr. Dolham had later designed the septic system. Mr. Bickford noted that a 100' circle denoting the well restriction setback was not on the plan and asked if its exclusion explained that the test pit could be moved if there were no circle. Mr. Tower said that was part of the PB's request and the circles would be removed.

Mr. Remian said the PP attorney had advised that keeping the retained land on this plan created an illegal lot, because it did not conform to Cushing's subdivision regulations. Mr. Tower said he had investigated that many times and found there was a law court case that said an applicant could designate retained land in more than one place, in forms and shapes that could never be a lot. He added that retained land was simply land that was not being offered for sale. The developer offered to provide the case reference to Mr. Cunningham, but Mr. Remian said that would not be necessary. Mrs. Kalloch asked the purpose of the retained land. Mr. Tower responded that right now it was just retained land. He had delineated Resource Protection [RP] in the shape determined by Gartley & Dorsky, though he did not agree with their methodology or results. The developer said he might, in the future, bring evidence before the PB that would support a different conclusion.

Mr. Remian noted that the application under consideration was for access to Lot 26, yet there was a ROW going to Sisters Wilderness Trust [SWT]. He said both he and Mr. Cunningham felt the driveway should terminate at Lot 26. Mr. Tower responded that the driveway did end at Lot 26; however, the ordinance said a driveway could serve two lots. The chairman said Mr. Cunningham was concerned about a lot to the north that had no bearing on this application and felt that the driveway should belong to Lot 26. Mr. Tower agreed that the application was to provide access to Lot 26 but said it was not limited to that. Mr. Ellis said the definition of a driveway allowed for access to two lots, so he did not understand the issue. CEO Bickford questioned that the PB would be granting hypothetical approval to a lot that did not exist for access into a subdivision that was shared by many homeowners, who were not represented at this meeting. Mr. Bickford said it was outside the boundaries of the moratorium and should not

be considered, even hypothetically. Mr. Tower stated that he would have to come back for approval if he wanted to use this driveway as access to SWT. Mr. Remian disputed this because, as it now stood, the driveway could provide access to two lots. Mr. Tower countered that the PB had no jurisdiction over the shape of the ROW once it was out of the RP and Mr. Remian agreed, asking what its purpose was. The CEO suggested that a notation that the driveway would serve only Lot 26 might solve the problem. Otherwise, the Board would be dealing with a hypothetical because if it agreed the driveway could serve two lots, the PB would have allowed access to a lot, which a future applicant could use to demand that lot be accepted. Mr. Remian said Mr. Tower was providing a ROW onto the boundary of SWT but Mr. Tower said he was providing a ROW shape that terminated at the SWT property line. Mr. Tower said there was no ROW granted by approval of this application. Mr. Remian asked the purpose of the 30' ROW shown on the plan and Mr. Tower repeated that the PB did not have jurisdiction over the ROW. Mr. Remian responded that the PB had jurisdiction over allowing a driveway into Lot 26, while this looked as though it was going to the border of SWT. Mr. Ellis said a plan note stated this was a 16' driveway and, although it would meet roadway standards, it must conform to the driveway definition; he saw nothing that suggested access to any other lots. Mr. Remian said making the driveway 12' wide would eliminate any possibility of making it a roadway.

Mr. Tower said there seemed to be an underlying suspicion of his future plans or motivation and stated that the PB's purview was to see if the driveway met current standards for its proposed use. Mr. Ellis asked the chairman to explain the Board attorney's concerns. Mr. Remian said they were that allowing a ROW to the lot to the north had enhanced that lot, which was not part of the application. Mr. Tower said that his attorney, Wayne Crandall, had provided him with a specific list of what the applicant had to do before this meeting. He said he had complied with that list and submitted the revisions a week before the required submittal date. Mr. Tower said he had invited Mr. Remian to join his meeting with the CEO, which he had not. The developer said he found it inappropriate for the chairman to question items now that could have been addressed at that meeting. There was a brief discussion of a well location change.

Mr. Remian asked who would own the driveway and Mr. Tower said the Homeowners Association would own the ROW and its fee. Mr. Remian said Note 6 on the plan stated there was no retained land in the subdivision, yet he saw 8.2 acres retained. Mr. Tower said those acres were not part of the subdivision, adding that the common area would be gifted to the Homeowners Association. Mr. Remian asked the applicant to explain the difference between the conservation easement of 4.77 acres approved by the DEP and what was shown as a common area of 3.58 acres. Mr. Tower produced copies of a letter to DEP, dated 1/15/07, asking for a minor modification. It explained that when the application was made to Cushing and DEP there was a verbal agreement with West Knoll Wildlife Trust [WKWT]. Subsequently, WKWT's insurer had insisted its island have a Cushing address, so it had retained two acres.

Mr. Remian said Mr. Tower's December 2005 letter to the PB stated there would be no filling for the Ocean Ridge extension to Lot 26, though the current cross-sections showed a 90% fill in some areas. The chairman said he thought the PB was remiss to allow a driveway through RP, since there had been an alternative route, and felt the developer should stick to having cut only. Mr. Tower said that, since December 2005, the Board had requested that the access to Lot 26 become a driveway rather than a roadway. This had increased the grade from 10% to 12%, resulting in a slope and geometry change that necessitated fill. Mr. Remian said he was concerned that the fill was in RP and added that decreasing the width of the road/driveway should not affect the cut. Mr. Tower replied that a driveway had no slope requirements, while a roadway did.

Mr. Remian said Note 10 on the plan failed to note that the PB had not made a positive finding of fact that no other reasonable alternative route existed. Mrs. Kalloch asked that the word "any" be removed from the 4th line of Note 8, because it should reference Lot 26 only; the chairman agreed. When Mr. Tower questioned this change, Mr. Ellis explained that the waiver had been granted for Lot 26 only, so the plan note should be specific in that regard.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Remian, that construction of a dwelling unit mentioned in Note 8 be on Lot 26, rather than on "any" lot.
Carried 3-0-2 (Mr. Kiskila & Mr. Muddle abstained)

Chairman Remian stated that the Board would move on to the undecided review criteria items, starting with 7.4 (Erosion). Mr. Ellis asked if the culverts were now on the drawing and the cuts and fills provided as requested and the chairman said they were. Mr. Ellis said he still felt inadequate to read the technical aspects of the drawings. Mr. Tower said his application stated that construction would follow best management practices and that erosion control was part of DEP approval.

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.4 (Erosion) based on information provided to DEP in the drainage plan.
Carried 4-1-0 (Mr. Remian voted against)

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.9 (Conformity with local ordinances and plans) based on the review of conformance with the Shoreland Zoning Ordinance of the access to Lot 26.
Carried 4-1-0 (Mr. Remian voted against)

Mr. Remian said he believed that Mr. Tower had complied with 7.16 by showing the drainage and culverts on the plan, though the PB had not seen DEP's approval.

ACTION: Mr. Remian made a motion, seconded by Mr. Muddle, for a positive finding of fact on 7.16 (Storm water) since the applicant had complied by showing drainage arrows and culverts.
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, for a positive finding of fact on 8.1 (Conform to the comprehensive plan), based on our finding that it complied with all state laws and town ordinances.
Carried 4-1-0 (Mr. Remian voted against)

Mr. Remian read aloud section 8.2 (Land suitable for development). He said that 8.2(A) did not apply. There was some question as to whether 8.2(C) applied and Mr. Tower said that area was reviewed by IF&W, which concluded that a 75' setback would be applicable. Mr. Ellis said he understood that the applicant would be in compliance with 8.2(B) if he complied with the provisions of the SZO that applied to the RP district. CEO Bickford said that the PB was recognizing there was an access through RP and, with the two intermingled, if the PB accepted the driveway standards it should also accept this.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, to find a positive finding of fact on 8.2 (Land suitable for development), based on the applicant's submission of the flood hazard zone in A; compliance in B with the provisions for the Resource Protection district in the Shoreland Zone Ordinance; C based on the information provided by the applicant that was submitted to IF&W pertaining to shorebirds.
Carried 4-1-0 (Mr. Remian voted against)

Mr. Bickford said he felt the Board should keep in mind that this was an amendment to an existing subdivision (rather than a new subdivision) when considering 8.3 (Burden of proof). Mr. Muddle asked if the CEO meant that this addition to the subdivision should meet the same requirements for approval as the subdivision. Mr. Bickford replied that the subdivision already existed, so this lot was simply an attachment to that subdivision, whose lots and roadways had been approved.

ACTION: Mr. Muddle made a motion, seconded by Mr. Kiskila, that this addition to the Meduncook Subdivision meets the requirements of a subdivision approval under laws and ordinances in place.
Carried 4-1-0 (Mr. Remian voted against)

Chairman Remian said the PB had already voted that permanent markers (8.5) be a condition of approval. He then chose to review the design and performance standards. Mr. Remian said B, C and D under 9.1 (Lots: size and shape, etc.) were not applicable; A and E had been met and F had already been approved.

ACTION: Mr. Remian made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 9.1 (Lots: size and shape, etc.); that A and E applied, B, C and D did not and F had already been voted on.
Carried 5-0-0

Mr. Ellis ascertained that the applicant had not heard from DEP regarding the change in size of the retained area.

ACTION: Mr. Remian made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 9.3 (Open space provisions), contingent upon the approval of DEP for the change in tract size from the 4.77 acres.
Carried 5-0-0

Mr. Remian said that 9.4 and 9.5 were not applicable.

ACTION: Mr. Ellis made a motion, seconded by Mr. Remian, for a positive finding of fact on 9.6 (Surface drainage), based on the requests being satisfied for cross-sections, culverts and drainage to be shown on the plan.
Carried 5-0-0

Mr. Ellis said the PB had asked the applicant at the January meeting to provide road standards of Shoreland Zone Ordinance [SZO] Subsection 15(G)(5 thru 9) on the drawing, so he assumed that 15(G)(1 thru 4) were OK. He recalled that erosion concerns from DEP had been in question, though it seemed they had been approved conditional to seeing them on the drawing, so they did not need to be voted on again. Mr. Ellis asked the chairman if he felt the depictions on the drawing met that condition and Mr. Remian said he did.

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, for a positive finding of fact on SZO Section 15(G)(1 thru 9) that the road standards had been complied with.
Carried 5-0-0

The Board then returned to the Subdivision Ordinance [SO]. Mr. Ellis said the December minutes went into detail on how the PB approached this and asked how the Board wanted to proceed now. Mr. Muddle asked if these road standards applied and Mr. Ellis said the Board had discussed that road standards had to be approved by the CEO after the road was built. CEO Bickford suggested the Board look at this because it was in the review criteria and some parts might be applicable. Mr. Tower suggested the PB might want to consider the first sentence of Note #10, which said the driveway would meet all roadway standards except those of width and grade. Mr. Bickford still thought it should be addressed.

ACTION: Mr. Muddle made a motion, seconded by Mr. Remian, for a positive finding of fact on SO Section 9.9(A) (Road standards).
Carried 5-0-0

The Board agreed that 9.9 B, D, F, G, I and J were not applicable.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on SO Section 9.9(C), based on the submissions of the roadway plans and profiles.
Carried 5-0-0

Mr. Remian said that 9.9(E) could not be determined at this time. Mr. Muddle made a motion that the road standards were approvable contingent upon approval by the CEO upon completion. Mr. Tower said the plan would not really be approved until the attached conditions were satisfied and asked if the Board intended that the subdivision not be approved until the road was constructed. Mr. Muddle said that was not what he had intended. Mr. Ellis said the applicant had already declared, in his submissions, that he would be following best management practices, so it seemed he planned to construct the road as required. Mr. Muddle altered his un-seconded motion as follows:

ACTION: Mr. Muddle made a motion, seconded by Mr. Remian, for a positive finding of fact on Section 9.9(E), based on the submittals, by the subdivider, of plans and specifications for the subdivision road.
Carried 5-0-0

ACTION: Mr. Remian made a motion, seconded by Mr. Ellis, for a positive finding of fact on Section 9.9(K).
Carried 4-0-0 (Mr. Kiskila was out of the room)

Mr. Remian said that 9.9(H) did not apply because it was a driveway and he asked the Fire Chief if he had any concerns about it. Mr. Kiskila said he would like a turnaround at the end of the driveway. Mr. Tower said there was a turnaround at the end of the road, which met the requirements. Mr. Kiskila said locating a T-turn at the end of the driveway would aid UPS and similar vehicles, as well as the Fire Dept.

ACTION: Mr. Muddle made a motion, seconded by Mr. Remian, for a positive finding of fact on Section 9.9(H), based on the Board requirement that there be a turnaround suitable to the Fire Chief at the end of the driveway.
Carried 5-0-0

ACTION: Mr. Remian made a motion, seconded by Mr. Kiskila, for a positive finding of fact on Section 9.12 (Fire protection: fire ponds, cisterns, dry hydrants) based on Note 8, as modified by the motion tonight of Evelyn Kalloch, with fire protection being a sprinklered system.
Carried 5-0-0

Mr. Ellis thought the Board should take another look at the SZO land use permit application to be certain the Board was satisfied all conditions were met. Mr. Remian said he thought that was all in order and CEO Bickford agreed. Mr. Ellis asked the CEO if he found the revised plan showing the footprint, driveway and property lines adequate. Mr. Bickford said the changes were in line with the amended subdivision plan. Mr. Ellis then asked if the specific things the Board had asked Mr. Crandall to show were on the plan. The CEO said they were. He suggested the Board look at the amended plan prior to the land use permit because the land use could not happen without the amended plan for access. Mr. Tower said he felt the Board should consider and move on both plans simultaneously because each had some provision that was mutually exclusive if not considered together. Mr. Remian said the land use permit application stated that Mr. Tower would be filling over 10 yards, which would take care of that SZO requirement.

After a brief discussion, the chairman asked that a note, stating that the driveway would only access Lot 26, be added to the drawing. The chairman also asked that the northern boundary of SWT be added to the drawing, since it had been shown on previous ones. Mr. Tower said he did not think this was necessary or required. Mr. Ellis recalled that this line was being contested and, thus, was not established. Peter Cardone said he had hired a surveyor, who had determined the line as extending from Pleasant Point Road straight to the center of the river. Mr. Tower said he recalled that his attorney, Wayne Crandall, questioned whether the PB wanted to put itself in the position of determining property lines. He said it was not germane to the discussion and decision on Lot 26. Mr. Ellis and Mr. Remian agreed.

ACTION: Mr. Remian made a motion, seconded by Mrs. Kalloch, that the Board approve the SZO use permit and the subdivision amendment as presented, with these conditions: that Note 8 be changed as per our motion; that a note be added that the driveway will be owned by the Homeowners Association; that the legends on the drawing be corrected; that the driveway will only access Lot 26; that permanent markers be in place; confirmation that DEP has approved the change in the conservation easement/common area from 4.77 to 3.58 acres be received; turnaround at the end of the driveway to be approved by the Fire Chief.
Carried 3-1-1 (Mr. Remian voted against and Mrs. Kalloch abstained)

The chairman asked each member to state the basis for his/her vote. Mr. Muddle said he voted to approve, based on the submittals by the applicant and upon considerable review. Mr. Kiskila stated that he concurred with Mr. Muddle. Mr. Ellis said he voted for approval of both the permit and the amendment based on all of the submissions. Mr. Remian said he voted not to approve his motion because he did not believe the Board acted in good faith in allowing a driveway through RP when there clearly was a possibility through Lot 10 and because the fill areas, which were not depicted in the first letter to the Board, should have been adhered to. Mrs. Kalloch said she abstained because she had neglected to bring her copy of the December minutes with her and had missed some of the material in various sections.

Mr. Bickford asked if he was to wait for the surveyor's stamp on a plan to be signed before issuing the land use permit. Mr. Remian said he would like to see all changes put on the drawing brought to the CEO for approval that all conditions had been met.

4. Adjournment: Mrs. Kalloch made a motion, seconded by Mr. Ellis, to adjourn the meeting at 9:28 pm.
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey
Recording Secretary